



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1005]

Certain L-Tryptophan, L-Tryptophan Products, and their Methods of Production

Commission Final Determination Finding a Section 337 Violation; Issuance of a Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 of the Tariff Act of 1930 (“section 337”), as amended, in this investigation. The Commission has issued a limited exclusion order prohibiting the importation of certain L-tryptophan and L-tryptophan products that infringe claim 10 of U.S. Patent No. 6,180,373 (“the ’373 patent”) or claim 20 of U.S. Patent No. 7,666,655 (“the ’655 patent”). The Commission has also issued a cease and desist order directed to the domestic respondent. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708-4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The

public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337-TA-1005 on June 14, 2016, based on a complaint filed by Complainants Ajinomoto Co., Inc. of Tokyo, Japan and Ajinomoto Heartland Inc. of Chicago, Illinois (collectively, "Ajinomoto" or "Complainants"). *See* 81 FR 38735-6 (June 14, 2016). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain L-tryptophan, L-tryptophan products, and their methods of production, by reason of infringement of certain claims of the '655 patent and the '373 patent (collectively, "the asserted patents"). *Id.* The notice of investigation identified CJ CheilJedang Corp. of Seoul, Republic of Korea; CJ America, Inc. ("CJ America") of Downers Grove, Illinois; and PT CheilJedang Indonesia of Jakarta, Indonesia (collectively "CJ" or "Respondents") as respondents in this investigation. *See id.* The Office of Unfair Import Investigations is not a party to the investigation.

On April 17, 2017, the ALJ issued an initial determination ("ID") granting Complainants' unopposed motion for summary determination that they satisfy the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(A) and (B) for both asserted patents. *See* Order No. 18, *unreviewed*, Comm'n Notice (May 17, 2017).

On August 11, 2017, the ALJ issued his final initial determination ("FID") finding no violation of section 337. Specifically, the FID finds that: (1) Respondents' accused products do not infringe the asserted claims of the '373 or the '655 patents either literally or under the

doctrine of equivalents; (2) claim 10 of the '373 patent is invalid for indefiniteness and lack of written description; (3) claim 20 of the '655 patent is invalid for lack of written description; and (4) Complainants' products do not satisfy the technical prong of the domestic industry requirement with respect to the '655 or the '373 patents. In addition, the ALJ issued a Recommended Determination ("RD") recommending, should the Commission find a section 337 violation, that the Commission issue: (1) a limited exclusion order against Respondents' accused products; and (2) a cease and desist order against Respondent CJ America. The RD further recommends no bond during the Presidential review period.

On August 14, 2017, the Commission issued a Notice requesting written submissions on the public interest. *See* 82 FR 39456-57 (Aug. 18, 2017). On September 20, 2017, Respondents filed a written submission in response to the Commission's August 14, 2017 Notice. No other submissions were received.

On October 12, 2017, the Commission issued a Notice determining to review the FID in its entirety. *See* 82 FR 48528-29 (Oct. 18, 2017). The October 12, 2017 Notice requested briefing in response to certain questions relating to the FID's finding of no section 337 violation. *See id.* In addition, the October 12, 2017 Notice solicited written submissions on issues of remedy, the public interest, and bonding. *See id.* On October 27, 2017, the parties filed written submissions in response to the October 12, 2017 Notice, and on November 3, 2017, the parties filed responses to each other's submissions.

Having examined the record of this investigation, including the FID, the RD, and the parties' submissions, the Commission has determined to:

- (1) reverse the FID's finding that the accused products do not infringe claim 10 of the '373 patent;

- (2) reverse the FID's finding that the domestic industry requirement is not satisfied for the '373 patent.
- (3) reverse the FID's finding that claim 10 of the '373 patent is invalid under 35 U.S.C. 112, second paragraph, for indefiniteness;
- (4) reverse the FID's finding that claim 10 of the '373 patent is invalid under 35 U.S.C. 112, first paragraph, for lack of written description;
- (5) affirm the FID's finding that claim 10 of the '373 patent is not invalid under 35 U.S.C. 112, first paragraph, for lack of enablement;
- (6) affirm the FID's finding that claim 10 of the '373 patent is not invalid under 35 U.S.C. 103 for obviousness;
- (7) affirm in part and reverse in part the FID's finding that the accused products do not infringe claim 20 of the '655 patent;
- (8) reverse the FID's finding that the domestic industry requirement is not satisfied for the '655 patent.
- (9) affirm the FID's finding that claim 20 of the '655 patent is not invalid under 35 U.S.C. 112, second paragraph, for indefiniteness.
- (10) reverse the FID's finding that claim 20 of the '655 patent is invalid under 35 U.S.C. 112, first paragraph, for lack of written description; and
- (11) affirm all other findings in the FID that are not inconsistent with the Commission's determination.

Accordingly, the Commission finds that there is a violation of section 337 with respect to both asserted patents. The Commission has determined the appropriate remedy is a limited exclusion order against Respondents' accused products, and a cease and desist order against

Respondent CJ America. The Commission has also determined that the public interest factors enumerated in subsections 337(d)(l) and (f)(1) (19 U.S.C. 1337(d)(l), (f)(1)) do not preclude issuance of the limited exclusion order and cease and desist order. The Commission has further determined to set a bond at zero (0) percent of entered value during the Presidential review period (19 U.S.C. 1337(j)).

The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 18, 2017.

Lisa R. Barton,
Secretary to the Commission.

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